

1 WILMER CUTLER PICKERING  
2 HALE AND DORR LLP

3 SONAL N. MEHTA (SBN 222086)  
4 Sonal.Mehta@wilmerhale.com  
5 2600 El Camino Real, Suite 400  
6 Palo Alto, California 94306  
7 Telephone: (650) 858-6000  
8 Facsimile: (650) 858-6100

9 DAVID Z. GRINGER (*pro hac vice*)  
10 David.Gringer@wilmerhale.com  
11 7 World Trade Center  
12 250 Greenwich Street  
13 New York, New York 10007  
14 Telephone: (212) 230-8800  
15 Facsimile: (212) 230-8888

16 ARI HOLTZBLATT (*pro hac vice*)  
17 Ari.Holtzblatt@wilmerhale.com  
18 MOLLY M. JENNINGS (*pro hac vice*)  
19 Molly.Jennings@wilmerhale.com  
20 1875 Pennsylvania Avenue, NW  
21 Washington, DC 20006  
22 Telephone: (202) 663-6000  
23 Facsimile: (202) 663-6363

24 *Attorneys for Defendant*

25  
26  
27  
28  
**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

21 MAXIMILIAN KLEIN, et al.,  
22  
23 Plaintiffs,  
24  
25 v.  
26 FACEBOOK, INC., a Delaware corporation,  
27  
28 Defendant.

Case No. 5:20-cv-08570-LHK

**DEFENDANT'S RESPONSE TO  
PLAINTIFFS' ADMINISTRATIVE  
MOTION TO CONSIDER  
WHETHER ANOTHER PARTY'S  
MATERIAL SHOULD BE SEALED  
(CIVIL L. R. 79-5(F))**

Judge: Hon. Lucy H. Koh

Pursuant to Civil Local Rule 79-5(f)(3), Defendant<sup>1</sup> files this response to Plaintiffs' Administrative Motion (Dkt. 184) to consider whether certain documents filed with Plaintiffs' Opening Brief Regarding Facebook, Inc.'s August 20, 2021 Clawback Notice (Dkt. 188) should remain under seal.

Plaintiffs' Administrative Motion asks the Court to consider whether to seal portions of its brief, entire exhibits that contain information that Defendant has designated Highly Confidential pursuant to the terms of the parties' Stipulated Protective Order, Dkt. 110, and an email thread between counsel for the parties. *See* Dkt. 184.

As set forth below, Defendant only seeks to seal certain portions of Plaintiffs' brief and accompanying exhibits that contain the personal information of Defendant's current and former employees. Accordingly, Defendant requests that the Court enter an order sealing the information identified in the table below:

Document	Portions to be filed Under Seal	Party Claiming Confidentiality
Plaintiffs' Opening Brief	Redacted employee names at: 1:38, 2:15-17, 2:20, 2:22-24, 3:1-2, 3:7-8; 3:14, 3:16, 3:19, 3:26-4:2, 4:5, 4:8, 4:11, 4:13, 7:25, 8:1-2; 8:11-14, 8:21, 8:23-9:1	Defendant
Exhibit B	Redacted employee names	Defendant
Exhibit C	Redacted employee names, email addresses, phone numbers, and initials	Defendant
Exhibit D	Redacted employee names, email addresses, phone numbers, and initials	Defendant
Exhibit E	Redacted employee names, email addresses, phone numbers, and initials	Defendant
Exhibit L	Redacted employee names, email addresses, phone numbers, and initials	Defendant

Included with this Response as Exhibit 1 are redacted versions of the exhibits and Plaintiffs' brief that Defendant requests remain under seal.

<sup>1</sup> Facebook, Inc. has recently changed its name to Meta Platforms, Inc.

**I. LEGAL STANDARD**

The underlying dispute concerns whether certain documents that Defendant produced to Plaintiffs and now seeks to claw back are privileged. Because this discovery dispute is only “tangentially related” to the merits, the Court may seal the material upon only a “particularized showing” under the “good cause” standard of Rule 26(c), *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006), including because disclosure would result in “annoyance, embarrassment, oppression, or undue burden or expense,” Fed. R. Civ. P. 26(c).

**II. SEALING OF EMPLOYEE IDENTIFYING INFORMATION**

Defendant asks the Court to seal portions of documents containing Defendant employee names, initials, phone numbers, and email addresses. Recognizing employees’ right to privacy, courts routinely seal such information. For instance, in *In re Bofî Holding, Inc. Sec. Litig.*, No. 15-CV-2324-GPC-KSC, 2021 WL 3700749 (S.D. Cal. July 27, 2021), the court credited a party’s argument that there was “good cause to seal the [documents] to ‘protect the rights of privacy’ of [former employees], and to prevent the ‘misuse’ of this identifying information to harass the former employees.” *Id.* at \*8. The court noted that “[r]equests to seal personal information are often granted to protect an individual’s privacy and prevent exposure to harm” and that the district court had “previously found the same information sealable under the stricter ‘compelling reasons’ standard for these very reasons.” *Id.* (sealing employee names and addresses). Similarly, in *Snapkeys Ltd. v. Google LLC*, No. 19-CV-02658-LHK, 2021 WL 1951250 (N.D. Cal. May 14, 2021), the court found the stricter “compelling reasons” standard satisfied and sealed “personally identifiable information,” including email addresses and phone numbers of current and former employees. *Id.* at \*3 (collecting cases holding similarly). As one Court recently explained, “good cause exists to seal” the “names of parties who are not involved with or incident to the current litigation where disclosure of the information would violate a party’s legitimate privacy interest.” *Shopify Inc. v. Express Mobile, Inc.*, No. 20-mc-80091, 2020 WL 4732334, at \*11 (N.D. Cal. Aug. 14, 2020).

1 The current and former Defendant employees identified in Plaintiffs' brief and exhibits  
 2 have a legitimate, legally recognized privacy interest in protecting their identities and contact  
 3 information from public disclosure. If their information and involvement in this particular matter  
 4 were to be disclosed, they may be subject to "annoyance," "oppression, or undue burden." Fed.  
 5 R. Civ. P. 26(c). For example, given the current media attention to the Defendant, they may  
 6 receive unsolicited emails and phone calls from the press or members of the general public,  
 7 which could rise to the level of threats or harassment. Defendant would also be harmed by  
 8 harassment of its employees because it could result in decreased morale, decreased productivity,  
 9 and increased expenses. Even the Wall Street Journal has recognized the privacy interests of  
 10 Defendant's employees by redacting their names from leaked documents in its publications. *See,*  
 11 *e.g., Facebook's Documents About Instagram and Teens, Published*, Wall Street Journal (Sept.  
 12 29, 2021), *available at* [https://www.wsj.com/articles/facebook-documents-instagram-teens-](https://www.wsj.com/articles/facebook-documents-instagram-teens-11632953840?mod=article_inline)  
 13 [11632953840?mod=article\\_inline](https://www.wsj.com/articles/facebook-documents-instagram-teens-11632953840?mod=article_inline) (noting that "the names of Facebook employees whose names  
 14 appear in the documents have been redacted, excepting only the most senior").

15 Further, the employees' names and contact information are not relevant to the Court's  
 16 determination of whether the documents Defendant seeks to claw back are privileged. *See, e.g.,*  
 17 *Music Grp. Macao Com. Offshore Ltd. v. Foote*, No. 14-CV-03078-JSC, 2015 WL 3993147, at  
 18 \*2 (N.D. Cal. June 30, 2015) (sealing names of employees suspected of cyber attack, finding  
 19 employee names irrelevant to defendant's investigation). This too counsels in favor of sealing.  
 20 *Id.*

21 Finally, Defendant does not dispute that these individuals' *roles* at the company at the  
 22 time of the communications may be relevant and therefore does not seek to redact descriptions of  
 23 their titles. Defendant's request is therefore narrowly tailored and there is no less restrictive  
 24 alternative that would suffice to protect the privacy interests at issue.

25  
 26 Dated: November 15, 2021

Respectfully submitted,

27  
 28 By: /s/ David Z. Gringer

1 SONAL N. MEHTA (SBN 222086)  
2 sonal.mehta@wilmerhale.com  
3 WILMER CUTLER PICKERING HALE  
4 AND DORR LLP  
5 2600 El Camino Real, Suite 400  
6 Palo Alto, CA 94306  
7 Telephone: (650) 858-6000

8 DAVID Z. GRINGER (*pro hac vice*)  
9 david.gringer@wilmerhale.com  
10 WILMER CUTLER PICKERING HALE  
11 AND DORR LLP  
12 7 World Trade Center  
13 250 Greenwich Street  
14 New York, New York 10007  
15 Telephone: (212) 230-8800

16 ARI HOLTZBLATT (*pro hac vice*)  
17 ari.holtzblatt@wilmerhale.com  
18 MOLLY M. JENNINGS (*pro hac vice*)  
19 molly.jennings@wilmerhale.com  
20 WILMER CUTLER PICKERING HALE  
21 AND DORR LLP  
22 1875 Pennsylvania Avenue, NW  
23 Washington, DC 20006  
24 Telephone: (202) 663-6000  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of November 2021, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System. And I hereby certify that I have served the foregoing document on counsel for the plaintiffs in the action in which relation is sought pursuant to agreement between the parties.

/s/David Z. Gringer  
David Z. Gringer